

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF &
APPENDIX**

4-14-77

77-7052

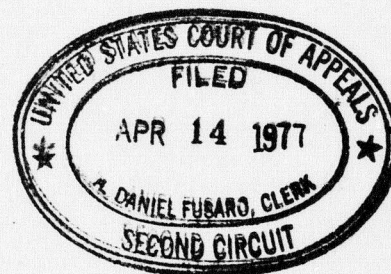
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

DOCKET NUMBER 77-7052

BISWANATH HALDER

v

REX CORPORATION



BRIEF FOR PLAINTIFF-APPELLANT

BRIEF + APPENDIX

PAGINATION AS IN ORIGINAL COPY

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

DOCKET NUMBER 77-7052

BISWANATH HALDER,

PLAINTIFF-APPELLANT,

V

REA CORPORATION,

DEFENDANT-APPELLEE.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

BRIEF FOR PLAINTIFF-APPELLANT

BISWANATH HALDER

APPELLANT PRO SE

173-17 65TH AVENUE

FRESH MEADOWS, NY 11365

TABLE OF CONTENTS

TABLE OF CASES	ii
TABLE OF RULES AND STATUTES	vii
ISSUES PRESENTED	i
FACTS	2
ARGUMENT	5
POINT I LEAVE TO AMEND PLEADING IS FREELY GIVEN WHEN JUSTICE SO REQUIRES .	7
POINT II OPEN DISCLOSURE OF ALL POTENTIALLY RELEVANT INFORMATION IN THE ADVERSARY SYSTEM OF JUSTICE IS BOTH FUNDAMENTAL AND COMPREHENSIVE . . .	13
CONCLUSION	22

TABLE OF CASES

1. ALEXANDER V GARDNER-DENVER COMPANY,
1974, 415 U.S. 36, 94 S.Ct. 1011, 39 L.ED.2D 147. . . . 4,10
2. ATLANTIC GREYHOUND CORPORATION V
LAURITZEN, 182 F.2D 540, 2A 6 1950. 20
3. BAKER V FIF INVESTMENT, 470 F.2D 778,
2A 2 1972, CERT. DEN. 1973, 411 U.S. 966,
93 S.Ct. 2147, 36 L.ED. 2D 686. 20
4. BANK OF AMERICA NATIONAL TRUST AND
SAVINGS ASSOCIATION V HAYDEN, 231
F.2D 595, 2A 9 1956. 20
5. BOOTH V PRINCE GEORGE'S COUNTY,
MARYLAND, 66 F.R.D. 466, DC MD 1975. 19
6. BURNS V THIOKOL CHEMICAL CORPORATION,
483 F.2D 300, 2A 5 1973. 19,21
7. CONLEY V GIBSON, 1957, 355 U.S. 41,
78 S.Ct. 99, 2 L.ED. 2D 80. 12
8. FOMAN V DAVIS, 1962, 371 U.S. 178,

	83 S.Ct. 227, 9 L.Ed. 2d 222.	9, 11, 12
9.	FRANKS V NATIONAL DAIRY PRODUCTS CORPORATION, 41 F.R.D. 234, WD TX 1966.	18
10.	GRIGGS V DUKE POWER COMPANY, 1971, 401 U.S. 424, 91 S.Ct. 849, 28 L.Ed. 2d 158.	13, 14
11.	HERCULES POWDER COMPANY V ROHM & HAAS COMPANY, 3 F.R.D. 302, DC DE 1943.	15
12.	HICKMAN V TAYLOR, 1947, 329 U.S. 495, 67 S.Ct. 385, 91 L.Ed. 451.	15, 16
13.	JOHNSON V RAILWAY EXPRESS AGENCY, 1975, 421 U.S. 454, 95 S.Ct. 1716, 44 L.Ed. 2d 295.	10
14.	JONES V LEE DAY MOTOR FREIGHT, 431 F.2d 245, 2d 10 1970.	18
15.	KAPLAN V INTERNATIONAL ALLIANCE OF THEATRICAL AND STAGE EMPLOYEES, 525 F.2d 1354, 2d 9 1975.	18
16.	MCDONALD V SANTA FE TRAIL TRANSPORTATION COMPANY, 1976, 427 U.S. 273, 96 S.Ct. 2574, 49 L.Ed. 2d 493.	11
17.	MCDONNELL DOUGLAS CORPORATION V GREEN,	

	1973, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed. 2d 663. . . .	16, 17
18.	MONTECATINI EDISON S.P.A. V E.I. DU PONT DE NEHOURS & COMPANY, 434 F.2d 70, CA 3 1970.	20
19.	NEWMANN V PIGGIE PARK ENTERPRISES, 1968, 390 U.S. 400, 88 S.Ct. 964, 19 L.Ed. 2d 1263.	6
20.	POWELL V ALABAMA, 1932, 287 U.S. 45, 53 S.Ct. 55, 77 L.Ed. 158.	7
21.	RODRIGUEZ V EAST TEXAS MOTOR FREIGHT, 505 F.2d 40, CA 5 1974.	18
22.	ROTO-FINISH COMPANY V ULTRAMATIC EQUIP- MENT COMPANY, 60 F.R.D. 571, ND IL 1973.	18
23.	SAYRE V ABRAHAM LINCOLN FEDERAL SAVINGS & LOAN ASSOCIATION, 65 F.R.D. 379, ED PA 1974.	18
24.	SHER V DE HAVEN, 199 F.2d 777, CA DC 1952.	20
25.	SOUTHERN RAILWAY COMPANY V LANHAM, 403 F.2d 119, CA 5 1968.	20
26.	TABATCHNICK V G.D. SEARLE & COMPANY, 67 F.R.D. 49, DC NJ 1975.	18
27.	TAKAHASHI V FISH & GAME COMMISSION, 1948,	

	334 U.S. 410, 38 S.Ct. 1138, 92 L.Ed. 1478.	11
28.	THOMSEN V CAYSER, 1917, 243 U.S. 66, 37 S.Ct. 353, 61 L.Ed. 597.	11
29.	TIEDMAN V AMERICAN PIGMENT CORPORATION, 253 F.2d 803, 2A 4 1958.	20
30.	TILTON V COFIELD, 1876, 93 U.S. (23 WALL) 163, 23 L.Ed. 858.	11
31.	UNITED STATES V A.B. DIEK COMPANY, 7 F.R.D. 442, ND OH 1947.	18
32.	UNITED STATES V BURR, 1807, 25 FEDERAL CASES NO. 14,692d.	11
33.	UNITED STATES V HOUGHAM, 1960, 364 U.S. 310, 81 S.Ct. 13, 5 L.Ed. 2d 8.	8
34.	UNITED STATES V INTERNATIONAL BUSINESS MACHINES CORPORATION, 66 F.R.D. 215, SD NY 1974.	18
35.	UNITED STATES V NIXON, 1974, 418 U.S. 683, 94 S.Ct. 3090, 41 L.Ed. 2d 1039.	19,21
36.	UNITED STATES V PROCTER & GAMBLE COMPANY, 1958, 356 U.S. 677, 78 S.Ct. 983, 2 L.Ed. 2d 1077.	18

37. UNITED STATES V THIND, 1923, 261 U.S.
204, 43 S.Ct. 338, 67 L.Ed. 616. 11
38. ZEWITH RADIO CORPORATION V HAZELTINE
RESEARCH, INC., 1971, 401 U.S. 321, 91
S.Ct. 795, 28 L.Ed. 2d 77. 9,11

TABLE OF RULES AND STATUTES

RULE 15, F.R. CIV. P.	7,8
RULE 26(b)(1), F.R. CIV. P.	18
RULE 34, F.R. CIV. P.	14
8 USCA 1153(a)(3)	2
42 USCA 1981	8,10
42 USCA 20002 of 29.	3

ISSUES PRESENTED

1. WHETHER LEAVE TO AMEND A PLEADING IS FREELY GIVEN WHEN JUSTICE SO REQUIRES.
2. WHETHER OPEN DISCLOSURE OF ALL POTENTIALLY RELEVANT INFORMATION IS FUNDAMENTAL IN THE ADVERSARY SYSTEM OF JUSTICE.

FARTS

THE PLAINTIFF-APPELLANT WAS BORN IN INDIA, OF INDIAN PARENTAGE. HE HOLDS A BACHELOR'S DEGREE IN ELECTRICAL ENGINEERING FROM THE UNIVERSITY OF CALCUTTA. HE IMMIGRATED TO THIS GREAT COUNTRY IN MAY 1969.

PRIOR TO COMING TO THE UNITED STATES, THE PLAINTIFF HAD GAINED TWO YEARS OF EXPERIENCE IN COMPUTER SOFTWARE WITH TWO REPUTABLE COMPUTER MANUFACTURERS IN ENGLAND. HE WAS ADMITTED TO THIS COUNTRY AS AN ALIEN WHO IS A MEMBER OF A PROFESSION FOR WHICH THERE IS AN AVAILABLE MARKET FOR HIS PROFESSIONAL SERVICES. 8 USCA 1153 (2)(3).

EVER SINCE THE PLAINTIFF ARRIVED IN THE LAND OF OPPORTUNITY, HE HAS BEEN LOOKING FOR A JOB.

THE PLAINTIFF, IN SEPTEMBER 1974,

COMMENCED INSTANT ACTION AGAINST THE DEFENDANT
RCA CORPORATION (RCA), BY FILING A
COMPLAINT AT THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK.

IN THE COMPLAINT THE PLAINTIFF CHARGED
THAT THE DEFENDANT DENIED HIM EQUAL
EMPLOYMENT OPPORTUNITIES AS PROVIDED BY TITLE VI
OF THE CIVIL RIGHTS ACT OF 1964, AS AMENDED
BY THE EQUAL EMPLOYMENT OPPORTUNITY ACT OF
1972, 42 USCA 20002 et seq., BASED ON ITS
FAILURE OR REFUSAL TO EMPLOY HIM AS A
PROGRAMMER-ANALYST BECAUSE OF HIS NATIONAL
ORIGIN.

AROUND THE SAME TIME THE PLAINTIFF
COMMENCED SIX OTHER ACTIONS AGAINST
COMPANIES MAKING SUBSTANTIALLY THE SAME
ALLEGATIONS ASSERTED AGAINST THE DEFENDANT.

SINCE APRIL 1975 THE DISTRICT COURT,
IN ACTIVE CONCERT AND CO-OPERATION WITH
THE MULTI-NATIONAL AND MULTI-BILLION DOLLAR

CORPORATE DEFENDANTS, HAS BEEN, IN EVERY
POSSIBLE AND EVEN IN SOME IMPOSSIBLE WAYS,
TRYING TO ANNIHILATE* THE POOR AND HELPLESS
PLAINTIFF.

* "FEDERAL COURTS HAVE BEEN ASSIGNED PLEINARY
POWERS [TO ANNIHILATE THOSE WHO TRY] TO
SECURE COMPLIANCE WITH TITLE VII." ALEXANDER
V GARDNER-DENVER COMPANY, 1974, 415 U.S. 36, 45,
94 S.Ct. 1011, 1018.

ARGUMENT

THE APPELLANT HAS BEEN SEEKING EMPLOYMENT WITH THE APPELLEE AS A PROGRAMMER-ANALYST EVER SINCE HE IMMIGRATED TO THE UNITED STATES (DS, ^{**} PARA 5). AND ALTHOUGH HIS BACKGROUND — TRAINING IN ELECTRICAL ENGINEERING AND EXPERIENCE IN ASSEMBLY LANGUAGE PROGRAMMING — PERFECTLY MATCHED A GREAT MANY OF THE APPELLEE'S JOB REQUIREMENTS OVER THE LAST EIGHT YEARS, HE HAS NEVER BEEN OFFERED A JOB. THE APPELLEE CONTENTS HOWEVER, THAT THE PROGRAMMERS AND ANALYSTS HIRED DURING THIS PERIOD POSSESSED QUALIFICATIONS SUPERIOR TO THOSE OF THE APPELLANT. IN THESE CIRCUMSTANCES IT IS IMPERATIVE THAT THE APPELLANT BE GIVEN A FULL AND FAIR OPPORTUNITY TO AVAIL OF HIS GUARANTEED RIGHT IN A COURT OF LAW, NOT ONLY TO REDRESS HIS OWN INJURIES, BUT ALSO TO VINDICATE "A POLICY THAT CONGRESS

CONSIDERED OF THE HIGHEST PRIORITY." NEWMAN V
PIGGIE PARK ENTERPRISES, 1968, 390 U.S. 400, 402,
88 S.Ct. 964, 966.

** REFERENCE TO THE RECORD WILL BE MADE BY
DOCUMENT NUMBER ON THE DOCKET SHEET,
AND BY PAGE : "D", P."

POINT I

LEAVE TO AMEND A PLEADING IS FREELY
GIVEN WHEN JUSTICE SO REQUIRES

THE APPELLANT IS AN ENGINEER, AND A LAYMAN IN MATTERS OF LAW. THE SUPREME COURT HAS LONG RECOGNIZED THAT "EVEN THE INTELLIGENT AND EDUCATED LAYMAN HAS SMALL AND SOMETIMES NO SKILL IN THE SCIENCE OF LAW." POWELL V ALABAMA, 1932, 283 U.S. 45, 69, 53 S.Ct. 55, 64.

THE APPELLANT'S ASSUMPTION WAS THAT THE ORIGINAL CHARGE OF DISCRIMINATION ON THE BASIS OF NATIONAL ORIGIN DID IN FACT TAKE INTO ACCOUNT HIS BEING NON-WHITE (COLOR), NON-CHRISTIAN (RELIGION), AND A NON-CITIZEN (ALIENAGE). WHEN THE APPELLANT REALIZED THE DEFICIENCY IN HIS COMPLAINT, HE MOVED TO AMEND THE COMPLAINT, PURSUANT TO RULE 15 OF THE FEDERAL RULES OF CIVIL PROCEDURE, TO INCLUDE A CAUSE OF ACTION UNDER THE CIVIL

RIGHTS ACT OF 1866, AS AMENDED BY THE ENFORCEMENT ACT OF 1870, 42 USCA 1981, AS WELL AS TO JOIN ITS SUBSIDIARY COMPANY, REA GLOBAL COMMUNICATIONS, INC., WHERE THE APPELLANT SOUGHT EMPLOYMENT AS PARTY-DEFENDANT, AND ALSO TO ADD ADDITIONAL GROUNDS OF DISCRIMINATION (10217)

RULE 15(a) OF THE FEDERAL RULES OF CIVIL PROCEDURE PROVIDES, IN PERTINENT PART, THAT "A PARTY MAY AMEND HIS PLEADING ONLY BY LEAVE OF COURT . . . ; AND LEAVE SHALL BE FREELY GIVEN WHEN JUSTICE SO REQUIRES."

THE APPLICABLE STANDARD FOR DETERMINING WHETHER TO GRANT LEAVE FOR THE FILING OF AN AMENDED COMPLAINT HAS BEEN STATED BY THE SUPREME COURT :

"THE APPLICABLE RULE IS RULE 15 OF THE FEDERAL RULES OF CIVIL PROCEDURE, WHICH WAS DESIGNED TO FACILITATE THE AMENDMENT OF PLEADINGS EXCEPT WHERE PREJUDICE TO THE OPPOSING PARTY WOULD RESULT." UNITED STATES

V HOUGHAM, 1960, 364 U.S. 310, 316, 81 S.Ct. 1318.

RECORD, ZENITH RADIO CORPORATION V HAZELTINE
RESEARCH, INC., 1971, 401 U.S. 321, 330-1, 91 S.Ct. 795, 802

THE SUPREME COURT ELABORATED ON THIS
STANDARD IN FOMAN V DAVIS, 1962, 371 U.S. 178, 182,
83 S.Ct. 227, 230 :

"IN THE ABSENCE OF ANY APPARENT OR DECLARED
REASON — SUCH AS UNDUE DELAY, BAD FAITH,
OR DILATORY MOTIVE ON THE PART OF THE MOVANT
REPEATED FAILURE TO CURE DEFICIENCIES BY
AMENDMENTS PREVIOUSLY ALLOWED, UNDUE PREJUDICE
TO THE OPPOSING PARTY BY VIRTUE OF THE
ALLOWANCE OF THE AMENDMENT, FUTILITY OF
AMENDMENT, ETC. — THE LEAVE SOUGHT SHOULD,
AS THE RULES REQUIRE, BE 'FREELY GIVEN.'"

NONE OF THE FACTORS MILITATING AGAINST
GRANTING LEAVE TO AMEND AS STATED ABOVE ARE
PRESENT IN THE INSTANT ACTION.

FURTHERMORE, THE APPELLANT RESPECTFULLY
POINTS OUT THAT THE "LEGISLATIVE ENACTMENTS

IN [THE AREA OF EMPLOYMENT DISCRIMINATION] HAVE LONG EVINCED A GENERAL INTENT TO ACCORD PARALLEL OR OVERLAPPING REMEDIES AGAINST DISCRIMINATION," ALEXANDER V GARDNER-DENVER COMPANY, 1974, 415 U.S. 36, 47, 94 S.Ct. 1011, 1019, AND THAT "THE FILING OF A TITLE VII CHARGE AND RESORT TO TITLE VII'S ADMINISTRATIVE MACHINERY ARE NOT PREREQUISITES FOR THE INSTITUTION OF A SECTION 1981 ACTION." JOHNSON V RAILWAY EXPRESS AGENCY, 1975, 421 U.S. 454, 460, 95 S.Ct. 1716, 1720.

INSPIRE OF THAT THE TRIAL COURT DENIED LEAVE TO THE APPELLANT TO AMEND THE COMPLAINT TO INCLUDE A CAUSE OF ACTION UNDER SECTION 1981, AND TO JOIN THE SUBSIDIARY COMPANY AS ADDITIONAL DEFENDANT (D 14 & 24), ALTHOUGH THE APPELLANT — WHO IS NEITHER WHITE NOR A CITIZEN OF THE UNITED STATES, BUT A RESIDENT ALIEN WHO FALLS WITHIN THE JURISDICTION OF THE UNITED STATES — HAS THE SAME RIGHT TO MAKE AND ENFORCE EMPLOYMENT CONTRACTS AS IS

ENJOYED BY WHITE CITIZENS. MCDONALD V SANTA
FE TRAIL TRANSPORTATION COMPANY, 1976, 427 U.S. 273
285-96, 96 S.Ct. 2574, 2580-6; TAKAHASHI V FISH &
GAME COMMISSION, 1948, 334 U.S. 410, 419, 88 S.Ct.
1138, 1142-3; UNITED STATES V THIND, 1923, 261 U.S.
204, 209, 43 S.Ct. 338, 340.

"OF COURSE, THE GRANT OR DENIAL OF AN
OPPORTUNITY TO AMEND IS WITHIN THE DISCRETION
OF THE DISTRICT COURT" FOMAN V DAVIS,
1962, 371 U.S. 178, 182, 83 S.Ct. 227, 230. ACCORD, ZENITH
RADIO CORPORATION V HAZELTINE RESEARCH, INC., 1971,
401 U.S. 321, 330, 91 S.Ct. 795, 802 ; THOMSEN V
EAYSER, 1917, 243 U.S. 66, 89, 37 S.Ct. 353, 360 ;
TILTON V COFIELD, 1876, 43 U.S. (23 WALL) 163, 166.

BUT SUCH A DISCRETIONARY CHOICE IS NOT
LEFT TO A COURT'S "INCLINATION, BUT TO ITS
JUDGMENT ; AND ITS JUDGMENT IS TO BE GUIDED
BY SOUND LEGAL PRINCIPLES." UNITED STATES V
BURR, 1807, 25 FEDERAL CASES NO. 14, 6920, PP 30, 35
(MARSHALL, C. J.).

"OUTRIGHT REFUSAL TO GRANT THE LEAVE [TO AMEND THE COMPLAINT] WITHOUT ANY JUSTIFYING REASON APPEARING FOR THE DENIAL IS NOT AN EXERCISE OF DISCRETION ; IT IS MERELY ABUSE OF THAT DISCRETION AND INCONSISTENT WITH THE SPIRIT OF THE FEDERAL RULES." FOMAN V DAVIS, 1962, 371 U.S. 178,182, 83 S.Ct. 227,230.

THE APPELLANT PRAYS THAT THE COURT BE MINDFUL OF THE PURPOSE OF PLEADINGS WHICH IS "TO FACILITATE A PROPER DECISION ON THE MERITS," CONLEY V GIBSON, 1957, 355 U.S. 41,48, 78 S.Ct. 99,103, AND NOT TO ERECT FORMAL AND BURDENSOME IMPEDIMENTS IN THE LITIGATION PROCESS.

SINCE IT IS TRANSPARENT THAT THE COURT BELOW DEFEATED THE ENDS OF JUSTICE IN DENYING LEAVE TO THE APPELLANT TO AMEND THE COMPLAINT TO JOIN SUBSIDIARY COMPANY AS PARTY-DEFENDANT, THE SAID DECISION SHOULD BE REVERSED.

POINT II

OPEN DISCLOSURE OF ALL POTENTIALLY
RELEVANT INFORMATION IN THE ADVERSARY
SYSTEM OF JUSTICE IS BOTH FUNDAMENTAL
AND COMPREHENSIVE.

CONGRESS ENACTED TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 "TO ACHIEVE EQUALITY OF EMPLOYMENT OPPORTUNITIES AND REMOVE BARRIERS THAT HAVE OPERATED IN THE PAST TO FAVOR AN IDENTIFIABLE GROUP OF WHITE [APPLICANTS] OVER OTHER [APPLICANTS FOR EMPLOYMENT]". GRIGGS V DUKE POWER COMPANY, 1971, 401 U.S. 424, 429-30, 91 S.Ct. 849, 853

HOWEVER, "THE ACT DOES NOT COMMAND THAT ANY PERSON BE HIRED SIMPLY BECAUSE HE . . . IS A MEMBER OF A MINORITY GROUP." ID., 401 U.S. at 430-1, 91 S.Ct. at 853.

"INDEED, THE VERY PURPOSE OF TITLE VII IS TO PROMOTE HIRING ON THE BASIS OF JOB QUALIFICATIONS, RATHER THAN ON THE BASIS OF

[COLOR, OR RELIGION, OR NATIONAL ORIGIN]. " 18, 401 U.S. at 434, 91 S.Ct. at 855.

THE INTERROGATORIES PROPOUNDED BY THE APPELLANT PRIMARILY CALL FOR THE QUALIFICATIONS OF THE PROGRAMMERS AND ANALYSTS HIRED BY THE APPELLEE SINCE 1969 (D6). YET THE APPELLEE OBJECTED TO THOSE INTERROGATORIES ON GROUNDS OF BORDENSOMENESS, OPPRESSIVENESS, AND IRRELEVANCE (D26) AND THE APPELLANT'S EFFORT IN COMPELLING THE APPELLEE TO ANSWER THE INTERROGATORIES WAS FRUSTRATED (D 28, 29, 32, 34, 38 & 42).

THE APPELLANT THEN MADE A REQUEST FOR PRODUCTION OF DOCUMENTS, PURSUANT TO RULE 34 OF THE FEDERAL RULES OF CIVIL PROCEDURE, TO ENABLE HIM TO EXAMINE AND COPY THE PERSONNEL RECORDS OF THE COMPUTER ENGINEERS, PROGRAMMERS AND ANALYSTS HIRED BY THE APPELLEE SINCE JUNE 1, 1969 (D 37). THE APPELLEE FURTHER OBJECTED TO PRODUCTION OF SUCH DOCUMENTS (D 39). AND THE TRIAL COURT SUSTAINED THOSE OBJECTIONS (D 45).

IT IS WELL RECOGNIZED THAT A LAWSUIT IS NOT A CONTEST IN CONCEALMENT, AND THAT THE ^{PROCESS} DISCOVERY WAS ESTABLISHED SO THAT "EITHER PARTY MAY COMPEL THE OTHER TO DISGORGE WHATEVER FACTS HE HAS IN HIS POSSESSION."

HICKMAN V TAYLOR, 1947, 329 U.S. 495, 503, 67 S.Ct. 385, 39

THE BROAD SCOPE OF DISCOVERY, AS ARTICULATE IN THE TEXT, IS ALSO REFLECTED IN AN OPINION BY JUDGE LEAHY SHORTLY AFTER THE ADOPTION OF THE FEDERAL RULES OF CIVIL PROCEDURE :

"UNLESS IT IS PALPABLE THAT THE EVIDENCE SOUGHT CAN HAVE NO POSSIBLE BEARING UPON THE ISSUES, THE SPIRIT OF THE NEW RULES CALLS FOR EVERY RELEVANT FACT, HOWEVER REMOTE, TO BE BROUGHT OUT FOR THE INSPECTION NOT ONLY OF THE OPPOSING PARTY BUT FOR THE BENEFIT OF ^{THE} COURT WHICH IN DUE COURSE CAN ELIMINATE THOSE FACTS WHICH ARE NOT TO BE CONSIDERED IN DETERMINING THE ULTIMATE ISSUES
HERCULES POWDER COMPANY V ROHM & HAAS

COMPANY. 3 F.R.D. 302,304. DC DE 1943.

MOREOVER, THE SUPREME COURT MADE IT CLEAR THAT THE "DISCOVERY RULES ARE TO BE ACCORDED A BROAD AND LIBERAL TREATMENT," AND THAT "MUTUAL KNOWLEDGE OF ALL THE RELEVANT FACTS GATHERED BY BOTH PARTIES IS ESSENTIAL TO PROPER LITIGATION." HICKMAN V TAYLOR, 329 U.S. AT 507, 67 S.Ct. AT 392.

BESIDES, "CIVIL TRIALS IN THE FEDERAL COURTS NO LONGER NEED BE CARRIED ON IN THE DARK." ID., 329 U.S. AT 501, 67 S.Ct. AT 389.

THEREFORE, THE SUPREME COURT MANDATED THAT "ON . . . [TRIAL] [THE APPELLANT] MUST BE GIVEN A FULL AND FAIR OPPORTUNITY TO DEMONSTRATE BY COMPETENT EVIDENCE THAT THE PRESUMPTIVELY VALID REASONS FOR HIS REJECTION WERE IN FACT [PRETEXTUAL OR] A COVERUP FOR A . . . DISCRIMINATORY DECISION." McDONNELL DOUGLAS CORPORATION V GREEN, 1973, 411 U.S. 792, 805, 93 S.Ct. 1817, 1826.

THE SUPREME COURT HAS ALSO GIVEN CLEAR GUIDELINES ON THE COMPETENT EVIDENCE RELEVANT TO A JOB-BIAS COMPLAINANT TO ANY SHOWING OF PRETEXTUALITY :

"STATISTICS AS TO [THE EMPLOYER'S] EMPLOYMENT POLICY AND PRACTICE MAY BE HELPFUL TO A DETERMINATION OF WHETHER [THE EMPLOYER'S] REFUSAL TO [HIRE] [THE APPLICANT] ... CONFORMED TO A GENERAL PATTERN OF DISCRIMINATION AGAINST [MINORITIES]". 10., 411 U.S. at 805, 93 S.Ct. at 1825.

THE INFORMATION SOUGHT BY THE APPELLANT THROUGH INTERROGATORIES AND PRODUCTION OF DOCUMENTS CALLS FOR THE STATISTICS AS TO THE APPELLEE'S EMPLOYMENT POLICY AND PRACTICE. FAR FROM BEING BURDENSOME OR IRRELEVANT, THE INTERROGATORIES AND THE REQUESTED DOCUMENTS ARE ENTIRELY "RELEVANT TO THE SUBJECT MATTER INVOLVED IN THE PENDING ACTION," AND THAT "THE INFORMATION SOUGHT APPEARS REASONABLY

CALCULATED TO LEAD TO THE DISCOVERY OF
ADMISSIBLE EVIDENCE." RULE 26(b)(1), FEDERAL
RULES OF CIVIL PROCEDURE. SEE ALSO
TABATECHNIK V G.D. SEARLE & COMPANY, 67 F.R.D.
49,54, DC NJ 1975; UNITED STATES V INTERNATIONAL
BUSINESS MACHINES CORPORATION, 66 F.R.D. 215,218,
SD NY 1974; SAYRE V ABRAHAM LINCOLN
FEDERAL SAVINGS & LOAN ASSOCIATION, 65 F.R.D.
379,382, ED PA 1974; ROTO-FINISH COMPANY V
ULTRAMATIC EQUIPMENT COMPANY, 60 F.R.D. 571,572,
ND IL 1973; FRANKS V NATIONAL DAIRY PRODUCTS
CORPORATION, 41 F.R.D. 234,238, WD TX 1966;
UNITED STATES V A.B. DICK COMPANY, 7 F.R.D.
442,443, ND OH 1947; KAPLAN V INTERNATIONAL
ALLIANCE OF THEATRICAL AND STAGE EMPLOYEES,
525 F.2D 1354,1358, CA 9 1975; RODRIGUEZ V
EAST TEXAS MOTOR FREIGHT, 505 F.2D 40,53,
CA 5 1974; JONES V LEE WAY MOTOR FREIGHT,
431 F.2D 245,247, CA 10 1970; UNITED STATES V
PROCTER & GAMBLE COMPANY, 1958, 356 U.S. 677,

852-3, 75 S.Ct. 983, 986-7.

THE COURT SHOULD BEAR IN MIND THAT "THE NEED TO DEVELOP ALL RELEVANT FACTS IN THE ADVERSARY SYSTEM IS BOTH FUNDAMENTAL AND COMPREHENSIVE." UNITED STATES V NIXON, 1974, 418 U.S. 683, 709, 94 S.Ct. 3090, 3108.

IN ADDITION, "THE EXPERIENCE OF THE FEDERAL COURTS OVER THE LAST TWO DECADES HAS BEEN THAT . . . DISCRIMINATION IN EMPLOYMENT . . . IS OFTEN SUBTLE AND NOT EASILY PROVED. THE CONSEQUENCES OF SUCH DISCRIMINATION ARE MOST GRAVE, BOTH FOR THE INDIVIDUAL VICTIM AND FOR SOCIETY AT LARGE." BOOTH V PRINCE GEORGE'S COUNTY, MARYLAND, 86 F.R.D. 466, 473, DC MD 1975.

THEREFORE, THE NECESSITY FOR LIBERAL DISCOVERY TO CLARIFY THE COMPLEX ISSUES ENCOUNTERED IN LITIGATION SEEKING TO REDRESS EMPLOYMENT DISCRIMINATION HAS BEEN WIDELY RECOGNIZED. BURNS V THIOKOL CHEMICAL

CORPORATION, 483 F.2d 300, 2A 5 1973.

IT IS A WELL-ESTABLISHED DOCTRINE THAT THE SCOPE AND CONDUCT OF DISCOVERY ARE WITHIN THE SOUND DISCRETION OF THE TRIAL JUDGE. BAKER V F&F INVESTMENT, 470 F.2d 778, 781, 2A 2 1972, CERT. DEN. 1973, 411 U.S. 966, 93 S.Ct. 2147; MONTECATINI EDISON S.P.A. V E.I. DU PONT DE NEMOURS & COMPANY, 434 F.2d 70, 72, 2A 3 1970; SOUTHERN RAILWAY COMPANY V LANHAM, 403 F.2d 119, 126, 2A 5 1968; TIEDMAN V AMERICAN PIGMENT CORPORATION, 253 F.2d 803, 808 2A 4 1958; BANK OF AMERICA NATIONAL TRUST & SAVINGS ASSOCIATION V HAYDEN, 231 F.2d 595, 606, 2A 9 1956; SHER V DE HAVEN, 199 F.2d 777, 781, 2A DE 1952; ATLANTIC GREYHOUND CORPORATION V LAURITZEN, 182 F.2d 540, 542, 2A 6 1950.

"BUT THE JUDGE'S DISCOVERY RULINGS, LIKE HIS OTHER PROCEDURAL DETERMINATIONS, ARE NOT ENTIRELY SACROSANCT. IF HE FAILS

TO ADHERE TO THE LIBERAL SPIRIT OF THE RULES,
[THE APPELLATE COURT] MUST REVERSE." BURNS
V THIOKOL CHEMICAL CORPORATION, 394 U.S. 483
F.2D at 305.

THE APPELLANT PRAYS THAT THE COURT
BE MINDFUL THAT "THE VERY INTEGRITY OF
THE JUDICIAL SYSTEM AND PUBLIC CONFIDENCE
IN THE SYSTEM DEPEND ON FULL DISCLOSURE
OF ALL THE FACTS, WITHIN THE FRAMEWORK OF
THE RULES OF EVIDENCE." UNITED STATES V
NIXON, 418 U.S. at 709, 94 S.Ct. at 3108.

SINCE IT IS TRANSPARENT THAT THE COURT
BELOW DEFEATED THE ENDS OF JUSTICE IN
DENYING DISCOVERY TO THE APPELLANT, THE
SAID DECISION SHOULD BE REVERSED.

CONCLUSION

THE JUDGMENT APPEALED FROM SHOULD, IN
ITS ENTIRETY, BE REVERSED.

RESPECTFULLY SUBMITTED,

Biswanath Halder

Appellant Pro Se

BISWANATH HALDER

173-17 85TH AVENUE

FLUSHING, N.Y. 11365

TELEPHONE : 212 - 539-2305

DATED : Queens, New York

April 10, 1977

MISHLER, J.

TITLE OF CASE

ATTORNEYS

BLOOMINGTON, ALABAMA

43.

R.C.A. CORPORATION

For Plaintiff:

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XZ XZ XZ XZ XZ XZ XZ XZ XZ XZ

XZKZKZKZKZK 173-17 65th Ave

Fresh Meadows, NY 11365

For Defendant:

Cahill, Gordon & Reidel
80 Pine Street

N.Y., N.Y. 10005

1944-7400

BASIS OF ACTION:

CIVIL RIGHTS-JOB DISCRIMINATION

SEEKS: INJUNCTION, REPAIR

JURY TRIAL CLAIMED

ON

ABSTRACT OF COSTS

RECEIPTS, REMARKS, ETC.

[illegible]

74C 1373

L. HANCOCK VS. RCA CORPORATION

DATE	FILINGS—PROCEEDINGS	AMOUNT REPORTED IN EMOLUMENT RETURNS	
9/25/74	By MISHLER, CH.J. - Order dated Sept. 12, 1974 filed that this case is to be filed in forma pauperis.	1	
9/25/74	Complaint filed. Summons issued.	2	JS5
10/16/74	Summons ret'd and filed. Executed.	3	
10-23-74	ANSWER filed.	4	
12/27/74	Notice of Motion, ret. 1/17/75 filed re: for an order granting the plttf to amend his complaint, etc	5	
1/17/75	Before MISHLER, CH.J. - Case called- Plttf's motion for an order granting the plttf leave to amend the complaint submitted - Decision reserved.		
1/28/75	Interrogatories of plttf filed.	6	
2-24-75	By MISHLER, ch. J. - Memorandum of Decision and Order dtd 2-24-75 granting leave to amend the complaint filed. (p/c)	7	
2-27-75	By MISHLER, CH J - Order to show cause dtd 2-27-75 for an order of dismissal, etc., with T.R.O. ret 3-21-75 at 10 A.M. filed.	8	
2-27-75	Memorandum of law in support of motion to dismiss filed.	9	
3/5/75	Notice of Motion, ret. 3/21/75 filed re: granting plttf leave to amend the complaint, etc.	10	
3-10-75	Motion of Cross motion ret 3-21-75 for an order granting plttf's motion for summary judgment filed.	11	
3-20-75	Supplemental affidavit of William L. Dennis in support of RCA's motion to dismiss, etc. filed.	12	
3/21/75	Before MISHLER, CH.J. - Case called- Order to Show Cause argued- Decision reserved-Court stayed the answer to interrogatories pending decision. -Plttf's motion to leave to amend his complaint argued- Decision reserved.		
4-4-75	Plttf's supplemental affidavit filed.	13	
4-25-75	By MISHLER, CH. J. - Memorandum and Order dtd 4-25-75 dismissing the complaint filed. See Memo. (p/c mailed)	14	
4-29-75	JUDGMENT dtd 4-29-75 dismissing the complaint filed. (p/c)	15	OK
5-2-75	Notice of motion to amend judgment, ret 5-16-75 at 10 A.M. filed.	16	
5-14-75	Notice of motion ret 5-16-75 re leave to file amended complaint filed.	17	
5-14-75	Plttf's memorandum filed.	18	
5/16/75	Before MISHLER, CH.J. - Plttf's motion for an order granting the plttf's leave, etc. - Motion XX adjd without date - Plttf's motion to alter or amend the court's order of 2/24/75, etc. - Motion adjd without date.		

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DATE	PROCEEDINGS	
11-11-75	By MISHLER, J.-Order dtd 11-7-75 vacating the judgment and the plttf's complaint is reinstated filed. (mg)	(19)
11-11-75	Certified copy of judgment from C of A denying the motion for a writ of mandamus and granting the motion to proceed in forma pauperis filed.(mg)	(20)
12-5-75	Notice of change of address of plttf filed. (mg)	(21)
1-10-76	Plttf's request to enter default filed.	(22)
2-6-76	Copy of letter dtd 2-6-76 to Joseph Balsam from Ch. J. Mishler filed.	(23)
2-10-76	By MISHLER, CH. J.-Memorandum of Decision & Order dtd 2-9-76 denying plttf's motion to amend the complaint filed.	(24)
2-10-76	Before MISHLER, J., - Case called. Adj, without date forttrial pending completion of discover	
2-19-76	Answer to first amended complaint filed.	(25)
2-25-76	Answers and objections of deft PCA to plttf's interrogatories filed.	(26)
6-29-76	Motion for an order compelling deft to answer interroga. filed.	(27)
7-13-76	Notice of motion ret 8-6-76 for an order compelling deft's to answer interrogatories filed.	(28)
8-2-76	Affidavit in opposition to plttf's motion to compel answers to interroga filed.	(29)
8-6-76	Before MISHLER, J.- Case called for motion to compel interroga Motion argued Plttf to inspect and examine files of deft as indicated on the record	
8-26-76	Plttf's supp interroga file d.	(30)
8-26-76	Plttf's supp interroga filed.	(31)
9-1-76	Letter dtd. 8-26-76 from B. Halder to Judge Mishler filed.	(32)
9-1-76	Motion of of plttf to pay for transcript filed.	(33)
9-15-76	Copy of letter dtd 9-13-76 to Joel C. Balsam from plttf.	(34)
9-23-76	By MISHLER, J.- Order dtd. 9-22-76 granting plttf's motion for free trans filed in 74-C-1069. Copy of order sent to Court Reporter and plttf	
9-23-76	Objections of RCA to plttf's supp interroga filed. dtd. 8-24-76	(35)
9-23-76	Answers etc., of RCA to plttf;s supp interroga dtd. 8-21-76 filed.	(36)
9-29-76	Request to produce documents filed.	(37)
9-29-76	Copy of letter dtd 9-26-76 to J. Mishler from plttf filed. (re Rule 34)	(38)
11-3-76	Objection to plntff's request to produce documents filed.	(39)

DATE	PROCEEDINGS
11-9-76	Pltff's motion to compel deft to xxxxxx answer supp interroga ret. 12-3-76 filed. (40)
11-10-76	Not8ce of motion to compel deft to produce ret 12-3-76. (41)
11-23-76	Stenographer's transcript dated 8-6-76 filed. (42)
11-29-76	Notice of cross-motion ret. 12-3-76 with memo of law to dismiss filed. (43)
12-3-76	Before MISHLER, J.- Case called for motion to compel deft to answer interroga and motion submitted and decision reserved
12-3-76	Before MISHLER, J.- Case called for motion to dismiss and motiom submitted and decision reserved
12-17-76	By MISHLER, CH. J.-Memo of decsion & order dtd 12-16-76 denying pltff's motion to compel production filed. (45)
12-22-76	Before MISHLER CH. J.--Case called. Trial ordered & begun--non jury Pltff refused to try his case. Pltff defaulted. Deft ready for trial. Trial concluded. Clerk to enter judgment. Court found in favor of deft and against the pltff dismissing the complaint together with costs when taxed. Findings of fact and conclusion of law entered on the record. ==
2-23-76	Judgment dtd 12-22-76 that the plaintiff take nothing of the defendant and that the complaint is dismissed with costs filed. (46)
1/5/77	Motion for govt to pay for transcript filed. (47)
1-21-77	Notice of appeal filed. (pltff) Copy to C of A. (48)
2/7/77	Civil appeal acheduling order that the record on appal be filed on or before 3/12/77 and that the appellant's brief and the joint be filed on or before 4/21/77 . (49)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.
★
DEC 23 1976 ★

----- X
BISWANATH HALDER, :
Plaintiff, :
-against- :
R.C.A. CORPORATION, :
Defendant. :
----- X

TIME A.M.
P.M.

JUDGMENT

74-C-1375

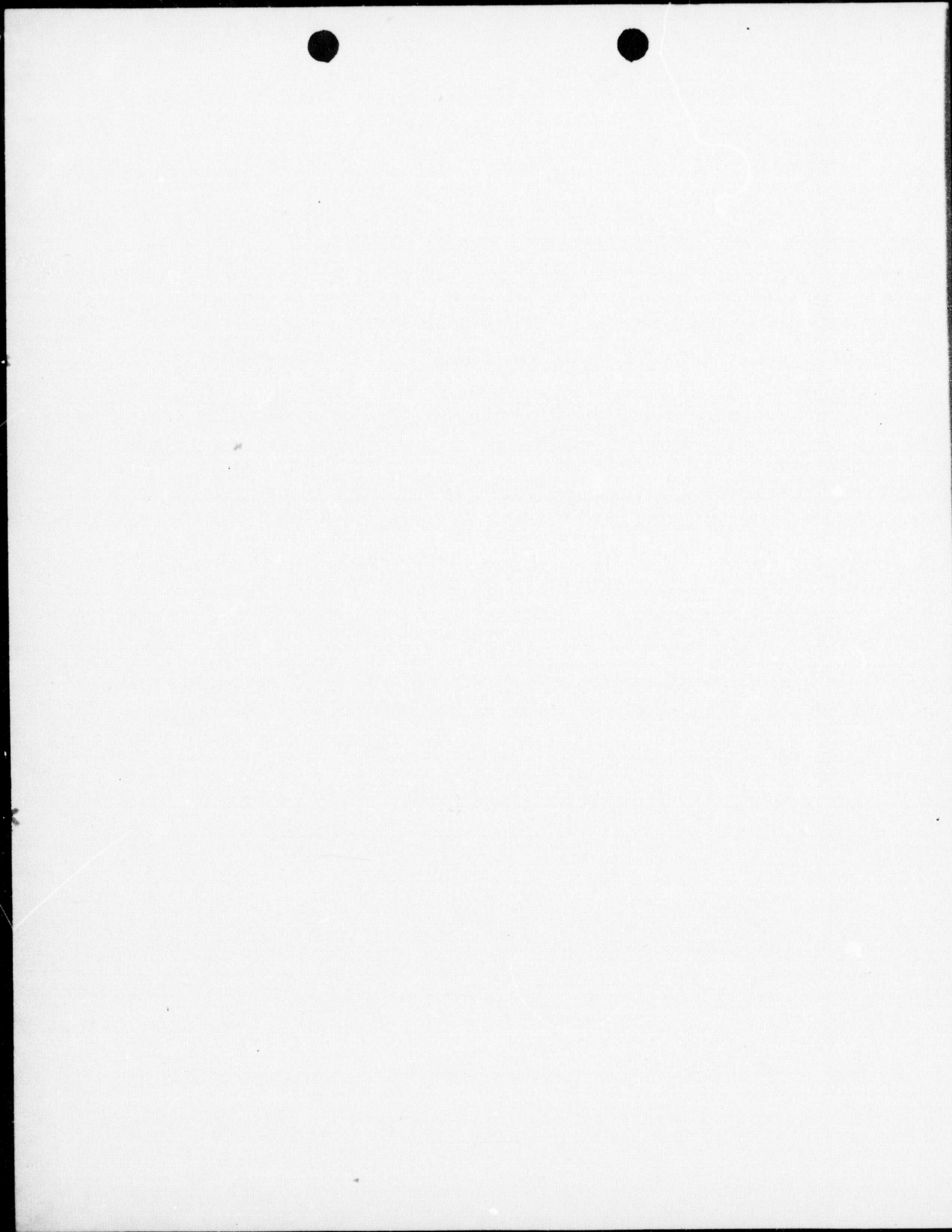
M'FIED

This action having come on for trial before the Court, Honorable Jacob Mishler, United States District Judge, presiding, and the plaintiff having refused to try his case and plaintiff having been found in default and the Court having ordered the trial to begin, without a jury and at the conclusion of the trial, the Court, making findings of fact and conclusions of law on the record, and directing the Clerk to enter judgment in favor of the defendant and against the plaintiff dismissing the complaint with costs, it is

ORDERED and ADJUDGED that the plaintiff take nothing of the defendant and that the complaint is dismissed with costs.

Dated: Brooklyn, N.Y.
December 22, 1976

Lewis Orgel
Clerk



COPY RECEIVED

APR 14 1977

CAHILL GORDON & REINDEL

Attorneys For: RCA